

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SFPP, LP pursuant to Commission
Resolution No. O-0043 issued October 24, 2002.

Application 03-02-027
(Filed February 21, 2003)

**ASSIGNED ADMINISTRATIVE LAW JUDGE'S RULING ESTABLISHING
PREHEARING CONFERENCE ON MAY 13, 2003; AND RESOLVING
CERTAIN PROCEDURES FOR THE PROCEEDING**

Summary

SFPP, LP (SFPP) filed Application (A.) 03-02-027 on March 21, 2003 in compliance with Ordering Paragraph 1 of Resolution O-0043, dated October 24, 2002. SFPP proposes to justify its current intra-state pipeline rates for the shipment of refined petroleum products. This became an issue when SFPP filed Advice Letter 14 on May 10, 2001 to implement a surcharge for increased electric energy costs. Resolution O-0043 was the Commission's response to Advice Letter 14. The preliminary ruling in Resolution ALJ 176-3108, determined this application was classified as "ratesetting" and that hearings were not required.

This application was protested in a timely fashion on March 28, 2003, by a group of shipping service customers, who together are "Indicated Shippers." SFPP replied to the protest on April 7, 2003 and, amongst other things, concurred with Indicated Shippers that evidentiary hearings were required.

In light of the complexity of the issues unresolved after the protest and reply I have determined that it is appropriate to convene a Prehearing

Conference (PHC), direct the parties to Meet and Confer prior to the PHC, and to provide an indicative agenda for discussion at the PHC. This agenda includes the proposal for an expedited schedule – though not under any formal expedited process of the Commission.

Notice of PHC

NOTICE IS HEREBY GIVEN that a PHC is set for May 13, 2003, at 10:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.

Scope of the PHC

By definition, the scope of a PHC proceeding is necessarily broad. My intention is to discuss the differing interests of the parties with a view to identifying issues that may be suitable for either settlement, or if necessary, further testimony and perhaps evidentiary hearings. Unless otherwise stated, any matters raised by the applications or which may be reasonably inferred from the proposals therein are within the scope of the PHC.

Meet and Confer

SFPP is directed to hold a meet and confer session prior to the PHC, with the Protestant, Indicated Shippers, and to provide notice to all other parties on the service lists for Advice Letter 14, and A.00-03-044. Telephonic or other reasonable means without requiring parties to physically attend may be used to conduct the Meet and Confer. A Case Management Plan shall be prepared after the Meet and Confer, and electronically served by SFPP no later than 9:00 a.m. PDT, May 9, 2003.

PHC Statements

Consistent with the need to focus the scope of this proceeding, parties' may electronically serve a PHC statement (separate from a Case Management

Plan) no later than 9:00 a.m. PDT, May 9, 2003. It should include comments on the following items:

- 1) Party's view on what type of regulatory ratesetting mechanism is appropriate for SFPP. In its application, SFPP seeks a "market based" rate structure, citing arguments why cost-based rates are not appropriate. Are market-based rates appropriate, and (assuming the affirmative) are the rates proposed by SFPP reflective of market rates?
- 2) Party's views on how the Commission should determine whether SFPP's rates are reasonable?
- 3) An indication of the inter-relationship of A.03-02-027 with other pending proceedings, before the Commission and in all other jurisdictions. SFPP is directed to provide a matrix or other listing, as may be useful, to illustrate the relationship of the application with other proceedings.
- 4) Comments on the Administrative Law Judge's proposed schedule.

ALJ's Proposed Schedule Milestones

- | | |
|---|---------------|
| 1) Discovery ends - | June 2, 2003 |
| 2) Testimony revisions and up-dates by SFPP - | May 23, 2003 |
| 3) Testimony by Indicated Shippers - | June 20, 2003 |
| 4) Rebuttal testimony - SFPP - | July 7, 2003 |
| 5) Settlement period ends - | July 18, 2003 |
| 6) PHC-2 and Evidentiary hearings begin - | July 25, 2003 |

Classification of Proceeding

At this time there appears to be no compelling justification to consider further Indicated Shipper's request (Protest, page 2) to reclassify the proceeding as "adjudication." Interested parties may pursue discovery and raise issues of fact in the proceeding as presently designated.

Ex Parte Communications

The ex parte communication rules set forth in Rule 7 (c) for ratesetting proceedings apply to this proceeding.

Discovery

Indicated Shippers did not raise any significant issues or questions regarding discovery problems in the protest. I take the apparent absence of such issues as a positive sign, and urge the parties to work cooperatively to submit timely data requests and responses thereto. If any party believes specific discovery rules or timelines are necessary for this proceeding, such concerns should be brought to the attention of the ALJ.

Service List

Until a current service list is established at the PHC for this proceeding parties are directed to serve all parties as they appear on the service lists for SFPP's Advice Letter 14 and A.00-03-044.

Filing and Service of Documents

By this ALJ Ruling, I adopt electronic service of documents in this proceeding. See Appendix B. Pursuant to Rule 2.3(b), pleadings may be served in electronic form on those parties that provided an electronic mail address to the Commission. The subject line for any such transmittals should include the application number and the words "SFPP Rate Case" at the start of the subject.

Parties should use PDF format, if possible, so that confusion regarding pagination is avoided. With respect to lengthy documents, parties should exercise judgment to avoid tying up servers and related problems, and consider such alternatives as notices of availability. Any party that also wishes to receive testimony in a paper format may make that wish known by filing and serving a notice to that effect. All parties shall honor such requests.

Paper format copies shall be served on the Assigned Commissioner, the ALJ (2 copies), and the Energy Division representative listed as "State Service."

In order to accommodate parties who do not have ready access to Commission offices where filings are accepted, pleadings may be filed one day after their otherwise applicable due date provided that service is accomplished on the due date. Parties taking advantage of this authorization shall refer to this ruling so that Docket Office Examiners are alerted to the authorization.

Public Participation Hearings

A schedule of public participation hearings is not necessary at this time.

Procedural Ground Rules

The ground rules, set forth in Appendix A, are intended to promote fair and orderly hearings and efficient use of hearing time, and are hereby adopted for this proceeding.

IT IS RULED that:

1. A Prehearing Conference (PHC) is set for May 13, 2003, at 10:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.
2. The scope of the May 13, 2003, PHC is as set forth in the foregoing discussion.
3. SFPP, LP (SFPP) is directed to conduct a meet and confer prior to the PHC. Interested parties may serve a PHC statement, and SFPP a Case Management Plan, no later than 9:00 a.m. PDT, May 9, 2003.
4. The Administrative Law Judge's suggested schedule for this proceeding is set forth above.
5. The ex parte communication rules set forth in Rule 7(c) apply to this proceeding.

6. Parties may serve documents in electronic form to those parties that provided an electronic mail address to the Commission consistent with the foregoing discussion.

Dated April 28, 2003, at San Francisco, California.

/s/ DOUGLAS M. LONG

Douglas M. Long
Administrative Law Judge

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PROCEDURAL GROUND RULES
As Frequently Adopted Before the Commission

Exhibit Format

See Rule 70 of the Rules of Practice and Procedure. Parties often fail to provide a blank space two inches high by four inches wide to accommodate the ALJ's exhibit stamp. If necessary, add a cover sheet to the front of the exhibit. The common practice of pre-printing the docket number, a blank line for the exhibit number, and witness names(s) is acceptable, but it is not a substitute for the required two by four inch blank space to accommodate the exhibit stamp.

Exhibits should be bound on the left side or upper left-hand corner. Rubber bands and paper clips are not acceptable.

Excerpts from lengthy documents should include the title page and, if necessary for context, the table of contents of the document.

While Rule 2 permits a type size of no smaller than 10 points in filed documents, parties are asked to use a type face of no smaller than 12 points wherever practicable.

Exhibit Copies

See Rule 71. The original and one copy of each exhibit shall be furnished to the presiding officer and a copy to each shall be furnished to the reporter and to each party. The copy furnished to the presiding officer may be the mailed copy. Except for exhibits that are served prior to the hearing, parties are responsible for having sufficient copies available in the hearing room for each party in attendance.

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Cross-Examination Exhibits

Allowing witnesses time to review new or unfamiliar documents wastes hearing time. The general rule is that a party who intends to introduce an exhibit in the course of cross-examination should provide a copy to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Documents in excess of two pages should be provided the day before. Generally, parties need not provide advance copies of documents to be used for impeachment or to obtain the witness' spontaneous reaction (although this practice is not encouraged).

Corrections

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made and served in a timely manner by providing new exhibit pages on which corrections appear. For Example: the original text to be deleted should be lined out with the substitute or added text shown above or inserted; each correction page should be marked with the word "revised" and the revision date. Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. For example, Exhibit 5-A is the first correction to Exhibit 5.

Hearing Hours

Hearings will generally run from 9:00 a.m. to 12:00 p.m. with two morning breaks and from 1:30 p.m. to 3:30 p.m. with one afternoon break. Upon request, and assuming that hearings appear to be on schedule, hearings may run from 9:00 a.m. to 1:00 p.m. on Fridays, if applicable.

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Cross Examination Time

Parties are placed on notice that it may be necessary to limit and allocate cross-examination time as well as time for redirect and recross-examination.

Rebuttal Testimony

Prepared rebuttal testimony should include appropriate references to the testimony being rebutted. It is inappropriate, and a potential grounds for striking, for any party to hold back direct presentations for introduction in rebuttal testimony.

Court Reporters

Common courtesy should always be extended to the reporters. Counsel should wait for witnesses to finish their answers, and witnesses should likewise wait for the whole question to be asked before answering. Counsel shall refrain from simultaneous arguments on motions and objections. Conversations at the counsel table or in the audience can be distracting to the reporter and other participants. Such distractions should be avoided.

(END OF APPENDIX A)

APPENDIX B

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ELECTRONIC SERVICE PROTOCOLS

As Frequently Adopted Before the Commission

Party Status in Commission Proceedings

These electronic service protocols are applicable to all “appearances.” In accordance with Commission practice, by entering an appearance at a prehearing conference or by other appropriate means, an interested party or protestant gains “party” status. A party to a Commission proceeding has certain rights that non-parties (those in “state service” and “information only” service categories) do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period, and to challenge the assignment of an Administrative Law Judge (ALJ). Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents.

Service of Documents by Electronic Mail

For the purposes of this proceeding, all appearances shall serve documents by electronic mail, and in turn, shall accept service by electronic mail.

Usual Commission practice requires appearances to serve documents not only on all other appearances but also on all non-parties in the state service category of the service list. For the purposes of this proceeding, appearances shall serve the information only category as well since electronic service minimizes the financial burden that broader service might otherwise entail.

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ELECTRONIC SERVICE PROTOCOLS

Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission's Rules of Practice and Procedure.

Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, *et seq.*, of the Commission's Rules of Practice and Procedure. Moreover, all filings shall be served in hard copy (as well as e-mail) on the assigned ALJ.

Electronic Service Standards

As an aid to review of documents served electronically, appearances should follow these procedures:

- Merge into a single electronic file the entire document to be served (*e.g.* title page, table of contents, text, attachments, service list).
- Attach the document file to an electronic note.
- In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.
- Within the body of the note, identify the word processing program used to create the document. (Commission experience indicates that most recipients can open readily documents sent in Microsoft Word or PDF formats.

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ELECTRONIC SERVICE PROTOCOLS

- If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (paper mail shall be the default, unless another means is mutually agreed upon).

Obtaining Up-to-Date Electronic Mail Addresses

The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Appearances should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

Pagination Discrepancies in Documents Served Electronically

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur.) For the purposes of reference and/or citation in cross-examination and briefing, all parties should use the pagination found in the original document.

(END OF APPENDIX B)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Establishing Prehearing Conference on May 13, 2003; and Resolving Certain Procedures for the Proceeding on all parties of record in this proceeding or their attorneys of record.

Dated April 28, 2003, at San Francisco, California.

/s/ CLAIRE JOHNSON

Claire Johnson

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

A.03-02-027 DUG/cgj